

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

PATRICIA VOGL

DEFENDANTS

HOMELAND AT HOME; HOMELAND CENTER

(b) County of Residence of First Listed Plaintiff Cumberland
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Keith E. Kendall, Esq., Scaringi & Scaringi, P.C., 20 North Hanover Street, Suite 201, Carlisle, PA, 17013; 717-960-0075

Attorneys (If Known)
Melissa K. Atkins, Esq.
Bunker & Ray
436 Walnut Street, WA01A
Philadelphia, PA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC 623(a); 42 USC 12112(a); 42 USC 2000e-(3)(a); 29 USC 2901, et seq.

Brief description of cause:

Age, disability and retaliation discrimination; Violation of Family and Medical Leave Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

05/30/2019

SIGNATURE OF ATTORNEY OF RECORD

Keith E. Kendall, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PATRICIA VOGL,
Plaintiff

v.

HOMELAND AT HOME;
HOMELAND CENTER,
Defendant

No. _____
:
:
:
:
:
:
:
JURY TRIAL REQUESTED

1. The Plaintiff is Patricia Vogl (“Plaintiff”), an adult individual currently residing at 307 East Elmwood Avenue, Mechanicsburg, Cumberland County, Pennsylvania, 17055.

2. Defendant Homeland at Home is a subsidiary of Defendant Homeland Center, with both Defendants having a principal business address at 1901 North 5th Street, Harrisburg, Dauphin County, Pennsylvania, 17102.

JURISDICTION

3. This Court has federal question jurisdiction pursuant to 28 U.S.C. §1331.

VENUE

4. Pursuant to 28 U.S.C. §1391(b)(1), the Middle District of Pennsylvania is the proper venue for the filing and prosecution of this action, in that the Defendants in this case have a principal place of business within the Middle District of Pennsylvania.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

5. The Plaintiff has exhausted her administrative remedies by timely filing a Complaint with the United States Equal Employment Opportunity Commission (EEOC), on July 19, 2018.

6. The Plaintiff received a Dismissal and Notice of Rights from the EEOC on March 11, 2019. A true and correct copy of Plaintiff's Dismissal and Notice of Rights is attached hereto at **Exhibit A**.

ALLEGATIONS COMMON TO ALL COUNTS

7. Paragraphs 1 through 6 are incorporated herein, as though fully set forth.

8. Plaintiff was hired by Defendant for a position as a Hospice Social Worker, on October 1, 2012.

9. Plaintiff's last position with Defendant, as of October 4, 2017, was as Defendant's Assistant Director of Social Services, at a salary of \$91,000.00 per year plus funding of a retirement plan and other benefits, including health insurance coverage.

10. The Chief Executive Officer of Homeland Center is Barry Ramper.

11. From April, 2017 until her termination from employment, Plaintiff's direct supervisor at Defendant Homeland was Deborah Klinger.

12. Plaintiff's second level supervisor at Defendant Homeland Center was Susan Minarik, R.N., the Executive Director of Defendant at Home.

13. In October, 2016, Plaintiff became aware, after her return from vacation, that Ms. Minarik had directed Plaintiff's coworker, Jody Brandt, to recall a Black caregiver from an assignment, because the client who requested that Defendant provide caregiving service notified Defendant that she "does not want any Black caregivers."

14. Ms. Minarik instructed social worker Jody Brandt to recall the Black caregiver - a Registered Nurse who was en route to the assignment - back from the caregiving assignment; and send a White caregiver in her place.

15. Plaintiff was informed about the incident upon her return to work, and during a Social Work Department meeting on October 18, 2016.

16. The Social Work Department proposed to address the incident with Defendant's Ethics Committee, chaired by Plaintiff, during a meeting of the Ethics Committee on October 19, 2016.

17. The meeting of October 19, 2016 resulted in the issuance, by the Ethics Committee, of six (6) recommendations to address the incident.

18. On October 20, 2016, Plaintiff presented the Ethics Committee's October 19 meeting minutes and recommendations to Defendant Homeland's Executive Director, Sue Minarik.

19. Upon reluctant consultation with legal counsel regarding the discriminatory incident, at which Plaintiff was present, Defendant's counsel affirmed that assigning staff based on their race was indeed an illegal discriminatory practice.

20. Plaintiff, upon the advice of counsel, offered to draft a non-discrimination clause to be included in Defendant's admission consent form.

21. Plaintiff prepared a non-discrimination clause on or about October 21, 2016, and sent the draft to Susan Minarik for approval.

22. On Monday, October 24, 2016, a meeting between Defendant's Ethics Committee, CEO Ramper and Susan Minarik was convened, to address the discriminatory matter and issue it raised about Defendant's non-compliance with non-discrimination laws.

23. Despite the representations and recommendations of Plaintiff and others to oppose the illegal discrimination at issue and to include a non-discrimination clause in Defendant's admission consent form, the Defendant refused to do so, instead denying that it had engaged in any discriminatory practice(s), in this or any other like incident(s).

24. Defendant's proposed resolution of the discrimination, from CEO Ramper, was to twice direct Jody Brandt – Plaintiff's coworker – to go to the affected, 93-year old client's home, to discuss her racist views.

25. On or about October 31, 2016, while Plaintiff was attending a professional conference in Florida, coworker Jody Brandt was called into a meeting of the Defendant's Ethics Committee convened by CEO Ramper.

26. Ms. Brandt resigned her social worker employment with Defendant shortly after the meeting of October 31, 2016, in protest of the Defendant's discriminatory policies.

27. Following Ms. Brandt's resignation, Defendant and its agents, CEO Ramper and Susan Minarik, increased their hostility towards and retaliation against Plaintiff for opposing Defendant's discriminatory practices in several ways including, but not limited to the following:

a. Defendant and agents acting on its behalf routinely began to question Plaintiff's professional judgment;

b. After the discriminatory incident, Defendant began calling impromptu meetings that interfered with Plaintiff's regular work activities, forcing Plaintiff to reschedule the activities and/or stay late to complete them;

c. Plaintiff was prohibited from hiring any new employees without the advice and consent of Defendant and agents acting on its behalf;

d. Defendant terminated and ended Defendant's Ethics Committee, without notice to or input from Plaintiff; and

e. Defendant repeatedly chastised Plaintiff for making an issue of the racial discrimination incident.

28. On June 24, 2017, Plaintiff's teenage son died in accidental drowning.

29. Pursuant to Defendant's attendance policy, Plaintiff was entitled to 3 days' bereavement leave.

30. Plaintiff's son's funeral was not held until July 1, 2017, for which Plaintiff was required by Defendant to use 7 days of paid time off, in order to attend her son's funeral.

31. Defendant's Executive Director Minarik directed Plaintiff to apply for disability and submit a request for Family and Medical Leave Act ("FMLA") leave.

32. On July 11, 2017, while continuing to suffer the emotional and mental health effects of her child's death, Plaintiff requested that she be permitted to return to work on July 17, 2017; and that she be permitted to work half days at the office and half days at home, due to her continuing fatigue and difficulty concentrating.

33. Plaintiff's request for this accommodation was denied, without discussion, by Defendant.

34. Despite having accrued substantial paid time off ("PTO"), Plaintiff was forced to take FMLA leave beginning July 11, 2017, with an anticipated end date of August 11, 2017.

35. During July, 2017, Plaintiff needed to undergo oral surgery, and while in severe pain from the surgery and despite continuing to suffer the emotional and psychological effects from her son's death, offered to work part-time, which offer the Defendant denied.

36. As a result of this accommodation denial, and while still suffering the emotional and mental health effects of her son's death, Plaintiff was required to submit another FMLA application for the period July 11, 2017 until October 6, 2017.

37. While Plaintiff was on FMLA leave, Defendants convened a meeting with Plaintiff's staff, to formulate a plan to address her absence until Plaintiff would be able to return to work.

38. Rachael Young was appointed as Interim Director, and agreed to remain in that position until January 1, 2018.

39. Grief syndrome was listed as a reason for Plaintiff's original FMLA leave forms, and on all medical leave of absence requests, for which she regularly treated with health care providers, including a grief counselor; and began taking medication for her health conditions.

40. On September 15, 2017, Plaintiff notified Defendants that her health care providers recommended that she resume her employment by first working part-time, and then gradually resuming her full-time duties at work.

41. On October 4, 2017, Defendants denied Plaintiff's requests for accommodation and medical leave without further discussion, and terminated Plaintiff's employment and her health insurance coverage, effective October 6, 2017.

42. On October 18, 2017, Defendants hired Mary Peters, a younger, less experienced, non-disabled person, to replace Plaintiff.

43. Defendants have a pattern and/or practice of terminating older employees in favor of hiring younger employees; who have no health-related issues and/or have no entitlement to FMLA leave; and who do not fall under Defendant's pension plan.

44. Defendants have a pattern and/or practice of terminating or otherwise punishing employees who oppose practices made unlawful by state and/or federal non-discrimination laws.

COUNT I: Violation of Age Discrimination in Employment Act
29 U.S.C. § 623(a)

45. Paragraphs 1 through 44 hereinbefore are incorporated herein, as if fully set forth.

46. Based upon the foregoing allegations, Defendants have discriminated against Plaintiff because of her age, by replacing her with a younger, less experienced and/or less qualified person.

WHEREFORE, Plaintiff requests a jury trial as to this Count; and an award thereafter of any relief to which she may be or become entitled, under the Age Discrimination in Employment Act including, but not limited to reinstatement; actual damages (lost wages and benefits); compensatory damages, liquidated damages, attorney fees and the expenses of this civil action; and such other relief as the Court may deem justified.

COUNT II – Violation of Americans with Disabilities Act

47. Paragraphs 1 through 46 hereinbefore are incorporated herein, as if fully set forth.

48. Based upon the foregoing, Plaintiff is a qualified individual with a disability who, as such, was entitled to an accommodation from Defendant, for her disabilities.

49. The Defendant refused to grant Plaintiff's requests for accommodation o her disabilities; and failed to engage in any meaningful dialogue to address Plaintiff's accommodation requests.

50. Based upon the foregoing allegations, Defendants have discriminated against Plaintiff because of her disabilities, as required by the Americans with Disabilities Act, by failing or refusing to provide Plaintiff with a reasonable accommodation for her qualifying disabilities.

WHEREFORE, Plaintiff requests a jury trial as to this Count; and an award thereafter of any relief to which she may be or become entitled under the Americans with Disabilities Act including, but not limited to reinstatement; actual damages (lost wages and benefits); compensatory damages, liquidated damages, attorney fees and the expenses of this civil action; and such other relief the Court may deem to be justified in this matter.

COUNT III – Violation of Title VII

51. Paragraphs 1 through 50 hereinbefore are incorporated herein, as though fully set forth.

52. As set forth hereinbefore, Plaintiff opposed a racially discriminatory incident by Defendants; and by opposing Defendants' discriminatory practices and policies; and by recommending and drafting a non-discrimination policy that was rejected by Defendants.

53. Plaintiff was terminated by Defendants in retaliation for her opposition to Defendants' illegally discriminatory acts and omissions, set forth hereinbefore.

WHEREFORE, Plaintiff requests a jury trial as to this Count; and an award thereafter of any relief to which she may be or become entitled under the Title VII of the Civil Rights act of 1964, as amended including, but not limited to reinstatement; actual damages (lost wages and benefits); compensatory damages, liquidated damages, attorney fees and the expenses of this civil action; and such other relief as the Court may deem justified.

COUNT IV – Violation of Family and Medical Leave Act

54. Paragraphs 1 through 53 hereinbefore are incorporated herein, as though fully set forth.

55. Defendant refused to allow Plaintiff the full measure of FMLA leave to which she was entitled under the Act, by being deprived of FMLA bereavement leave

to attend her son's funeral; and by being terminated prior to the conclusion of her full period of FMLA leave.

56. Plaintiff's termination prior to the conclusion of her FMLA leave was retaliation by Defendant for her use of FMLA leave.

WHEREFORE, Plaintiff requests a jury trial as to this Count; and an award thereafter of any relief to which she may be or become entitled under the Title VII of the Civil Rights act of 1964, as amended including, but not limited to reinstatement; actual damages (lost wages and benefits); compensatory damages, liquidated damages, attorney fees and the expenses of this civil action; and such other relief as the Court may deem justified.

Date: May 30, 2019

s/Keith E. Kendall
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